

1 CHAIRPERSON JAMES: I'd like to thank each of you.
2 I know that it's been an incredible burden for you to be here
3 today. There's not -- that it is a very unusual day, I know, in
4 the lives of at least two of you. Is there anything, Senator
5 Reid or Congressman Ensign, that you'd like to share with us
6 now?

7 CONGRESSMAN ENSIGN: No comment.

8 CHAIRPERSON JAMES: Given that situation, I think
9 your commitment to the public policy process and your commitment
10 to this state is very evident in the fact that you would take
11 your time to be here today to express your views, all of which
12 are very important to this Commission, and I want to thank each
13 of you for your contribution. Also, thank you for your help in
14 hosting this and putting this together, your input in all the
15 various panels, is very much appreciated. It isn't over yet. We
16 will continue to need to hear from you and to depend on your
17 expertise and your advice as we bring this to a conclusion.

18 MR. LOESCHER: Madame Chairman.

19 CHAIRPERSON JAMES: Absolutely. I was about to say
20 if there are any Commissioners that would have any comments or
21 questions at this point, I'd like to open it up.

22 Commissioner Loeschler.

23 MR. LOESCHER: Madame Chairman, I have two.

24 Senator Bryan, I'm from Alaska and you probably know
25 my senators, Ted Stevens and Frank McCousky (ph.).

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1 I received a copy of your letter from our Chair, and
2 a copy of information that requires that the government
3 accounting office audit this Commission, and you pose a number
4 of other questions, one dealing with FACA and why did we come to
5 a conclusion that we are not governed by FACA, although it's our
6 intent as a Commission and our Chair fully expresses that we
7 will follow FACA to the fullest extent possible, and that's our
8 policy on the Commission.

9 And then you question our legal advisor. Why do we
10 have our own legal advisor, in your letter. This exercise has
11 caused considerable administrative costs to our staff -- over a
12 couple hundred hours just responding to the GAO audit. We've
13 had to have legal advice and it's not over yet. And my concern
14 is what is your purpose? Is it to delay us? Because we could
15 use this time and resources to work on Internet and these other
16 things that Congress finds so important, but we'd like to hear
17 from you.

18 SENATOR BRYAN: That's a fair question. I'm happy
19 to respond. Let me say that a number of people contacted us,
20 raised some concerns about both financial issues as well as
21 personnel turnover, as well as -- and in my view at least -- the
22 non-compliance with the Federal Open Meeting Law, FACA as you
23 called it.

24 Now, let me just make it clear that I made no public
25 statements or accusations. Indeed we did not release the letter
26 nor did we issue any press statement. Absolutely nothing. That

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1 was a decision which the Commission made to make others aware of
2 it, and I don't quarrel with that judgment, but you need to know
3 we made no public statement or comment about that.

4 Secondly, the questions that have been requested are
5 of a routine audit nature. If indeed it's taken 200 hours I
6 would respectfully submit that you might want to reconsider the
7 people who are responding to these questions. These are routine
8 audit questions. There's nothing that requires a rocket science
9 reply, and if indeed all of the things that the GAO has talked
10 about are in compliance, and they may be, this is a very easy
11 thing. It is not my purpose in any way to delay, but there were
12 some serious concerns raised by others and I requested the
13 general accounting office to make that inquiry.

14 MR. LOESCHER: Madame Chairman, the second question,
15 and I'll be done. I'm a Native American from Alaska. I've been
16 a Tribal Council member for 30 years. I recognize that special
17 relationship that Native Americans have comes through the US
18 Constitution under the Commerce Clause where Congress keeps
19 plenty of authority over Native American affairs, and it was in
20 that spirit that Congress enacted IGRA, the Indian Gaming
21 Regulatory Act. We -- I serve with Dr. Moore and Mr. Wilhelm on
22 the subcommittee that deals with Indian gaming on this
23 Commission, and we've had over 70 witnesses so far, Tribal
24 leaders from across America, testify to this Commission. And we
25 have found that Native American gaming operations are regulated
26 at the local level by state governments, by Tribal governments,

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1 and then by the Indian Gaming Regulatory Commission, and
2 substantial amounts of dollars and manpower and reporting are --
3 and also independent auditors are employed in that regard -- at
4 these multiple levels of regulations.

5 So this morning we endured a cheap shot by Governor
6 Miller and again we hear some criticism from the two senators
7 from Nevada regarding the Indian gaming regulatory to the story
8 that it's not regulated. That's not quite our finding. We also
9 know, and this Commission took a position regarding this issue
10 of regulations by the Secretary of Interior, you know, regarding
11 compacting between the states and Congress delayed that matter
12 until April or May of this forthcoming year. So it's in
13 Congress' hands as to what's going to happen there.

14 But I'm wondering if your position is not more
15 partisan in defense of your state and the industry here than it
16 is in terms of looking at the US Constitution and the Doctrine
17 of Tribal Sovereignty versus the Doctrine of State Rights, and
18 how you reconcile that given the facts that we're finding.

19 SENATOR BRYAN: Mr. Loescher, let me say at the
20 outset that I am a supporter of IGRA, the Indian Gaming
21 Regulatory Act of 1988, as I believe it was enacted by the
22 Congress. That was the year before I got there. The underlying
23 premise of IGRA is to the extent that a state, as a matter of
24 its exercise of its own sovereignty, makes a determination that
25 any form of gaming be permitted in that state, Native Americans
26 within that state should have the same opportunity. I fully

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1 subscribe to that. As you know, two states have made a judgment
2 to have no form of gaming at all; Utah and Hawaii. So the
3 premise of IGRA to be valid, namely to the extent that a state
4 makes a determination to have any form of gaming, that same form
5 of gaming ought to be made available to Native Americans within
6 that state.

7 My concern is that I do not believe that there is a
8 comprehensive, regulatory structure that is adequate. You have
9 40 people -- 40 people that in effect oversee the operation of
10 300 Tribes with gaming operations involving -- pardon me --
11 that's 300 Tribal gaming operations with 186 Tribes in 25
12 states. Now, you have indicated that the states have
13 jurisdiction to regulate. That is not true, sir, unless the
14 Tribe is willing to enter into a compact with the state and do
15 so. My former budget chairman and friend of many years, Bill
16 Bible, will correct me if I mistake the proposition. I believe
17 in Nevada we have negotiated five compacts. And as part of that
18 negotiation, the state oversees the regulation, but the state
19 has no power if the Tribe as part of its negotiations with the
20 Governor refuses to accord that right. So in effect, what we
21 have and what I fear, we have a regulatory vacuum. I do not
22 believe, sir, with all due respect to your concern that we have
23 an adequate regulatory structure in gaming, and the sole purpose
24 of my testimony is not denigrate Indian gaming, but to simply
25 say that when cash is an inventory, when 7.4 billion dollars
26 generated nationally -- I've lived in this state for more than

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1 six decades. I can understand what can happen and I am very
2 fearful that without an adequate regulatory structure we have
3 some major problems, and I believe that you and members of this
4 Commission can provide some leadership to make sure that we have
5 that regulatory structure.

6 SENATOR REID: Madame Chairwoman.

7 CHAIRPERSON JAMES: Certainly, Senator Reid.

8 SENATOR REID: If I could join with in answering the
9 Commissioner from Alaska's question.

10 First of all, I'm familiar with the statement of
11 Governor Miller. It certainly was not a cheap shot. Governor
12 Miller is Governor of the state of Nevada. He served longer
13 than anyone else. He served 10 years as the Governor of the
14 state of Nevada. He has a long career as a judge, as a chief
15 prosecutor in this county, Las Vegas, and Governor Miller
16 doesn't take cheap shots. What he said he believed. And while
17 you may believe it's a cheap shot, Governor Miller feels that
18 his information given to this Commission should be probative in
19 nature.

20 I would also say that I can't speak with a lot of
21 authority about a lot of things, but gaming regulation is
22 something I can speak with some authority. I was chairman of
23 the Nevada Gaming Commission for over four years. During that
24 period of time we went through some very difficult times with
25 organized crime attempting to infiltrate, and did infiltrate on
26 a number of occasions, legalized gambling in the state of

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1 Nevada. Had we not had the strict regulations and enforcement
2 we had in the state of Nevada, it would have been untoward. We
3 were able with the workings of the Federal Bureau of
4 Investigation and others to do something about what was taking
5 place.

6 And for you to say, Mr. Commissioner, that Indian
7 gaming is regulated properly is based either upon a lack of
8 knowledge or wishful thinking. I have attempted, as a member of
9 the Indian Affairs Committee of the United States Senate, to put
10 some teeth in the ability to enforce what limited regulations
11 there are in Indian gaming. But we can't get the revenues to do
12 that, the Tribes fight us every step of the way. And also
13 Senator Bryan talked about 40 people trying to enforce gaming
14 laws in 25 different states and 300 different Tribal -- Tribal
15 gaming entities. Keep in mind that the Indian Gaming Commission
16 has no control over most types of gambling anyway in Indian
17 country. So for you to say that it's regulated properly, I have
18 to respectfully disagree. I'm not here to denigrate Indian
19 gaming. I think there are some operations that do a very good
20 job, and have been good for Indian country. But I think you are
21 simply being unfair, and I'm just saying based on lack of
22 knowledge, I hope. But the fact of the matter is that we need
23 regulation. There's an unfair playing field out there. You
24 have places like Nevada and Atlantic City have the strictest
25 controls possible with gaming, and we have little or no control

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1 in Indian country. It's unfair. It's not taxed and it's not
2 regulated. That's unfair.

3 CHAIRPERSON JAMES: Any other comments? Any other
4 Commissioners?

5 With that again, I'd like to thank you on a very
6 busy day in your lives for being here and thank you for your
7 commitment to the public policy process.

8 I'm going to call for a break right now so we can
9 set up for our public comment period, and so that we can say
10 goodbye to our guests

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